

NTSB Order No. EA-4017

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 4th day of November, 1993

Respondent .

Docket SE-13128

## 6187

by the filing of a timely appeal brief. We will grant the motion, to which respondent has filed a reply in opposition.

The record establishes that respondent filed a timely notice of appeal from the written decision the law judge served on July 21, 1993, but he did not file an appeal brief within 30 days after that date; that is, by August 20.<sup>2</sup> In response to the motion to dismiss, respondent argues that his brief, filed August 25, was timely because, consistent with advice provided with the law judge's decision, it was filed within 30 days from the date he filed a notice of appeal (i.e., July 28). We do not agree that the respondent was so advised.

Respondent maintains that the timeliness of his appeal brief is demonstrated by the "plain, unambiguous language" of the information on appeals attached to the law judge's written decision. Specifically, respondent points to the following passage in an attachment to the decision entitled "Appeals": "Any Party to this proceeding may appeal this Initial Decision or Order by filing, with the Board, a Notice of Appeal within ten (10) days after this date. Such Appeal must be perfected within thirty (30) days after this date by filing, with the Board, a Brief in support of such appeal." Respondent, albeit recognizing that he had 10 days from the service date of the law judge's decision to file a notice of appeal, maintains that the term "this date" in the second of the two quoted sentences refers not to the service date of the decision to which the advice was attached, as the term must mean in the first sentence, but to the date of any notice of appeal that might be filed within the 10 days following the date of service of the decision.<sup>3</sup> We think that such a belief reflects an unwarranted misreading of the

---

<sup>2</sup>The law judge's decision, on cross motions for summary judgment, affirms an order of the Administrator revoking respondent's private pilot certificate (No. 552982249) under section 61.15(a) of the Federal Aviation Regulations.

<sup>3</sup>We rejected a similar argument in Administrator v. Webber, NTSB Order No. EA-3006 (1989). In that case, the respondent contended that the following advice justified his belief that the 30 days for filing an appeal brief ran from the date of filing of a notice of appeal: "An appeal from the decision and order herein may be made by filing with the Board...a notice of appeal within 10 days from date of service hereof, perfected by the filing of brief in support thereof within 30 days from said service date." See also, Administrator v. Walsh, NTSB Order No. EA-2601 (1987) ("Since the only antecedent for the reference to "this date" in the quoted statement is "today's date", there is no basis for construing the law judge's use of the term "this date" to mean some date within the next 10 days on which respondent might file a notice of appeal.")

quoted advice, which, in our opinion, by referring in both sentences to "this date," clearly indicates that both time periods begin on the same day.<sup>4</sup> Respondent's position is also contrary to the explicit, actual language of the applicable rule (see note 1, supra), a copy of which had previously been furnished to him.

In view of the foregoing, we are not persuaded that respondent's error as to the deadline for his appeal brief establishes good cause for its tardiness. See, e.g., Administrator v. Near, 5 NTSB 994 (1986)(Unfounded mistake as to filing requirement does not constitute good cause.). In the absence of a showing of good cause, dismissal of the appeal is required by Board precedent. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above order.

---

<sup>4</sup>Compare Section 821.57(b) of our Rules of Practice, pursuant to which a brief in support of an appeal from an emergency order of the Administrator must be filed "[w]ithin 5 days after the filing of the notice of appeal...."